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5 Attorney for Defendants
American Tire Corporation and
6 Abraham Hengyucius
7

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 AMERICAN TIRE DISTRIBUTORS, INC., a)
Delaware corporation,)

12)
13 Plaintiff,)

14 v.)

15)
16 AMERICAN TIRE CORPORATION,)
unincorporated business with an address in El)
17 Monte California, ABRAHAM HENGYUCIUS,)
an individual and DOES 1 through 10,)

18 Defendants.)
19

CASE NO.: CV 08-2971 MMM

REPLY TO OPPOSITION TO MOTION
TO SET ASIDE DEFAULT
AND DECLARATIONS OF ABRAHAM
HENGYUCIUS AND MARIA W. TAM
IN SUPPORT THEREOF

HEARING DATE: March 2, 2009
TIME: 10:00 a.m.
CRTRM: 780

20 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that defendants American Tire Corporation and Abraham
22 Hengyucius reply to the Opposition filed by plaintiff as follows:

23 **I. PLAINTIFF'S SERVICE OF THE COMPLAINT AND SUMMONS ON THE**
24 **DEFENDANTS ARE NOT PROPER**

25 According to plaintiff, plaintiff allegedly sub-served the complaint and summons for this
26 action on defendant American Tire Corporation in June 2008 by giving the complaint and
27 summons to an unknown individual at 10501 Valley Blvd., El Monte (hereafter "El Monte
28 address"). And plaintiff contended that it sub-served the same documents on defendant

1 Abraham Hengyucius (hereinafter "Abraham Hengyucius") in July 2008 by giving the
2 documents to an unknown individual at the same El Monte address. Plaintiff admit that it did
3 not serve the summons and complaint on defendant Hengyucius personally. As the defendant
4 Hengyucius has stated in the Motion to Set Aside the default that American Tire Corporation is a
5 New Jersey company. American Tire Corporation does not have its principal place of business
6 nor any branch office located in City of El Monte. Additionally, defendant Hengyucius does not
7 work in El Monte. In fact, he has not been to the City of El Monte for more than two years. Any
8 alleged subserving of the summons and complaint on some unknown individuals are not proper
9 service of the complaint and summons on these two defendants.

10 According to the case summary, the plaintiff then misinformed the court that it has
11 subserved the two defendants at the El Monte address. Based on the wrong information, the
12 court clerk entered default against defendants American Tire Corporation and Hengyucius.
13 According to the court's case summary report, default by clerk was entered against American
14 Tire Corporation on July 18, 2008 and default by clerk was entered against Abraham Hengyucius
15 on or about August 20, 2008 based on the alleged sub-service at an El Monte address around
16 July 2008. The plaintiff cited California Code of Civil Procedure Section 415.20 as the support
17 for the sub-service. However, this statute only applies if the defendants has its principal place of
18 business or reside at said location. Defendants do not operate their business nor reside at the El
19 Monte address. **At the time the Default by Clerk were entered against the defendants, the**
20 **defendants were not actually in default since they were not properly notified and were not**
21 **aware of this action. As such, the defaults entered are void.**

22 **II. PLAINTIFF DID NOT SUFFER ANY HARM IN ANY DELAY OF THE FILING**
23 **OF THE MOTION TO SET ASIDE THE DEFAULT**

24 According to the court's case summary, after the plaintiff obtained the default by clerk in
25 August, 2008, plaintiff filed an application for Motion for Default Judgment and was denied by
26 the court for improper service in August 2008. It is apparent that this Court was also aware of
27 the service of the complaint and summons by the plaintiff appears to be inadequate and was not
28 proper. (Exhibit A - Case summary entry 33). The plaintiff filed some application and then

1 withdrew the filing (Exhibit A - Case summary entry 39). In mid October, 2008, plaintiff finally
2 provided a copy of the complaint and summons to defendant Hengyucius in Chino. Upon the
3 discovery of the lawsuit and receiving a copy of the complaint, defendants retained an attorney
4 Maria W. Tam to find out more about the complaint. The first thing that Maria W. Tam did was
5 check on the case summary and found that default has been entered back in August 2008. She
6 then called the plaintiff's counsel and asked them to set aside the default. Plaintiff's counsel
7 absolutely refused to set aside the default. Since plaintiff refused to allow defendants to set aside
8 the default, defendants has to print out all of the documents from the court's website, researched
9 the trademark of plaintiff, the law, the type of products that plaintiff sells and thereafter filed the
10 Motion to Set Aside the Default based on the information discovered.

11 Plaintiff does not suffer any irreparable harm nor damages since from the time of the
12 improper default to the time the motion to set aside was filed, the plaintiff has filed some
13 applications that were either denied by the court or withdrawn by the plaintiff itself.

14 **III. PLAINTIFF DID NOT SHOW ANY DOCUMENTS THAT PROVE THAT THE**
15 **SERVICE AT THE EL MONTE ADDRESS IS PROPER SERVICE**

16 Plaintiff in its Opposition contends that since back in 2003, defendant Hengyucius were
17 listed as one of the registered agent for a company known as American Seashore International
18 Inc (Plaintiff's Opposition exhibit 4). The document presented by plaintiff was dated 2003.
19 Enclosed hereto as exhibit B is a copy of the Secretary of State of California for the registration
20 of American Seashores International Inc. Defendant Abraham Hengyucius is not listed as the
21 registered agent for said company.

22 **IV. DEFENDANTS WILL PREVAIL IF DEFENDANT ARE GIVEN THE**
23 **OPPORTUNITY TO LITIGATE THIS CASE**

24 According to the plaintiff's complaint, plaintiff is suing defendants for infringement of
25 trademark. A careful review of the plaintiff's registered trademark shows that the mark itself is a
26 logo. The plaintiff's mark consists of a name and logo. A copy of the plaintiff's trademark is
27 enclosed hereto as exhibit C. The defendant's trade name of American Tire Corporation does
28 not resemble the plaintiff's registered mark. And the targeted customers are different. The

1 products sold are different. The distribution channels are different. The Court also should
2 understand that the name "American Tire Corporation" or "American Tire Distributors" are not
3 very strong marks. Since the word "American" is a very popular name in America.

4 **V CONCLUSION**

5 For the reasons stated above and in the Motion to Set Aside, defendants American Tire
6 Corporation and Abraham Hengyucius respectfully pray that the Court would set aside the
7 default entered against them by the plaintiff and provide defendants 20 days to file the Answer or
8 other response to the plaintiff's complaint.

9
10 Law Office of Maria W. Tam

11 

12 Dated: February 6, 2009

13 _____
14 Maria W. Tam
15 Attorney for defendants
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DECLARATION OF ABRAHAM HENGYUCIUS

I, Abraham Hengyucius, declare as follows:

1. I am over the age of eighteen years old. I am familiar with the following testimony and can testify to it if called upon to do so.

2. I am the president of American Tire Corporation, a company doing business in the State of New Jersey.

3. American Tire Corporation is not registered in the State of California and does not have an office in El Monte, California as alleged by the plaintiff.

4. A number of years ago, I was listed as one of the registered agent for American Seashores International Inc. About two years ago, I was no longer involved nor related to American Seashores International Inc. As I have previously stated that I do not work in El Monte and have not been to El Monte for almost two years. Any service of the complaint and summons to any unknown individual at El Monte is not service on me.

5. Around October 2008, I was provided with a copy of the complaint and summons for this case. I then retained Maria W. Tam to find out more about this lawsuit. We also did research and investigation to find out more about plaintiff's trademark and the type of business that plaintiff is in. It took us sometime to find out all the necessary information regarding the products sold, the mark, the channels of trade of plaintiff.

6. American Tire Corporation manufactured Off the Road Tires that do not resemble plaintiff's product. There is no confusion among the customers. I pray that the Court will allow us the opportunity to prove that there is no infringement of the mark and that there is no confusion among the customers.

I declare under the penalty of perjury that the foregoing is true and correct. Executed at Monterey Park, California.

Dated: February 6, 2009



Abraham Hengyucius
Declarant

DECLARATION OF MARIA W. TAM

I, Maria W. Tam, declare as follows:

1. I am over the age of eighteen years old. I am the attorney of record for the defendants American Tire Corporation and Abraham Hengyucius. I am familiar with the following testimony and can testify to it if called upon to do so.

2. In October 2008, I was retained by the defendants American Tire Corporation and Abraham Hengyucius to represent them in this action. Upon being retained, I check on the court's website to look at the history of the case and found that default has been entered. I then called the plaintiff's counsel and asked her to set aside the defaults. Plaintiff's counsel refused to set aside the default.

3. I then printed out all of the documents that have been filed in this case to try to find out about the history of the case. I also reviewed the complaint, researched the law regarding the trademark infringement, researched regarding the trademark involved. My clients then researched regarding the background of plaintiff, the products sold by the plaintiff, the channels of trade and the targeted customers and found that there is no likelihood of confusion among the customers.

4. Around January 2009, we gathered all of the information and I then filed this Motion to Set Aside the defaults.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Monterey Park, California.



Dated: February 6, 2009

Maria W. Tam
Declarant

PROOF OF SERVICE BY MAIL AND EMAIL

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 809 S. ATLANTIC BLVD., SUITE 205, MONTEREY PARK, CA 91754. On February 6, 2009, I served the within **REPLY TO OPPOSITION TO MOTION TO SET ASIDE AND DECLARATIONS OF ABRAHAM HENGYUCIUS AND MARIA W. TAM IN SUPPORT THEREOF** on the interested parties by placing a true copy thereof enclosed in a sealed envelope thereon, fully prepaid, by first class mail of the United States mail at Monterey Park, CA 91754, addressed as follows:

**Lisa Kobialka
James Hannah
King & Spalding
1000 Bridge Parkway, Suite 1000
Redwood Shores, CA 94065**

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Monterey Park, CA 91754 in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

SERVICE BY EMAIL: Additionally, the document is being emailed to Lisa Kobialka at email address: lkobialka@kslaw.com and James Hannah at email address: jhannah@kslaw.com

I declare, under penalty of perjury, that the foregoing is true and correct. Executed at Monterey Park, California on February 6, 2009.



JAMES YANG

Exhibit A

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(JTLx), DISCOVERY, MANADR

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA (Western
Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:08-cv-02971-MMM-JTL**

American Tire Distributors, Inc. v. American Tire Corporation et al
Assigned to: Judge Margaret M. Morrow
Referred to: Magistrate Judge Jennifer T. Lum
Cause: 15:1051 Trademark Infringement

Date Filed: 05/06/2008
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

American Tire Distributors, Inc.
a Delaware corporation

represented by **Clark Lackert**
King & Spalding LLP
1185 Avenue of the Americas
New York , NY 10036
(212) 556-2100
TERMINATED: 06/06/2008
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

James R Hannah
Perkins Coie
101 Jefferson Drive
Menlo Park , CA 94025
650-838-4300
Email: jhannah@kslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kathleen E McCarthy
King & Spalding LLP
1185 Avenue of the Americas
New York , NY 10036
(212) 556-2100
TERMINATED: 06/05/2008
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lisa Kobialka
King & Spalding
333 Twin Dolphin Drive Suite 400
Redwood Shores , CA 94065
650-590-0700
Email: lkobialka@kslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

American Tire Corporation
unincorporated business with an address in el

represented by **Maria W Tam**
Maria W Tam Law Offices

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Monte California

809 South Atlantic Boulevard Suite 205
 Monterey Park , CA 91754
 626-281-9353
 Fax: 626-281-9354
 Email: tamlawoffice@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Abraham Hengyucius
an individual

represented by **Maria W Tam**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

DOES
1 through 10

Date Filed	#	Docket Text
05/06/2008	<u>1</u>	COMPLAINT against Defendants American Tire Corporation, Abraham Hengyucius, DOES 1 through 10.(Filing fee \$ 350 PAID) Jury Demanded, filed by plaintiff American Tire Distributors, Inc..(car) Additional attachment(s) added on 5/16/2008 (ds,). (Entered: 05/08/2008)
05/06/2008	<u>2</u>	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiff American Tire Distributors, Inc.. (car) Additional attachment(s) added on 5/16/2008 (ds,). (Entered: 05/08/2008)
05/06/2008	<u>3</u>	NOTICE TO PARTIES OF ADR PILOT PROGRAM filed.(car) (Entered: 05/08/2008)
05/06/2008	<u>4</u>	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Clark Lackert for Plaintiff American Tire Distributors, Inc.. (car) (Entered: 05/08/2008)
05/06/2008	<u>5</u>	NOTICE OF FILING FEE DUE on Pro Hac Vice Application mailed to attorney Kathleen E McCarthy for Plaintiff American Tire Distributors, Inc.. (car) (Entered: 05/08/2008)
05/06/2008		FAX number for Attorney James R Hannah, Lisa Kobialka is (650) 590-1900. (car) (Entered: 05/08/2008)
05/06/2008		FAX number for Attorney Clark Lackert, Kathleen E McCarthy is (212) 556-2222. (car) (Entered: 05/08/2008)
05/28/2008	<u>8</u>	APPLICATION OF NON-RESIDENT ATTORNEY Kathleen E. McCarthy for Leave to Appear Pro Hac Vice. FEE PAID. filed by plaintiff American Tire Distributors, Inc.. Lodged proposed order. (bp) (Entered: 06/02/2008)
05/29/2008	<u>6</u>	NOTICE OF DISCREPANCY AND ORDER: by Judge Margaret M. Morrow, ORDERING notice of change of attorney information submitted by Plaintiff American Tire Distributors, Inc. received on 5/23/08 is not to be filed but instead rejected. Denial based on: pursuant to GO 08-02, case is designated for electronic filing. (bp) (Entered: 06/02/2008)
05/29/2008	<u>7</u>	NOTICE OF DISCREPANCY AND ORDER: by Judge Margaret M. Morrow, ORDERING notice of change of attorney information submitted by Plaintiff American Tire Distributors, Inc. received on 5/23/08 is not to be filed but instead rejected. Denial based on: pursuant to GO 08-02, case is designated for electronic filing. (bp) (Entered: 06/02/2008)
05/30/2008	<u>9</u>	APPLICATION OF NON-RESIDENT ATTORNEY Clark W. Lackert for Leave to Appear Pro Hac Vice. FEE PAID. filed by plaintiff American Tire Distributors, Inc. Lodged order. (rrey) (Entered: 06/04/2008)

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06/03/2008	<u>12</u>	20 DAY Summons Issued re Complaint - (Discovery) <u>1</u> as to defendants' American Tire Corporation, Abraham Hengyucius, DOES. (bp) (Entered: 06/11/2008)
06/05/2008	<u>10</u>	ORDER DENIED <u>8</u> by Judge Margaret M. Morrow: Denying APPLICATION OF NON-RESIDENT ATTORNEY Kathleen E. McCarthy for Leave to Appear Pro Hac Vice. FEE PAID. (ah) (Entered: 06/06/2008)
06/06/2008	<u>11</u>	ORDER DENIED by Judge Margaret M. Morrow: Denying APPLICATION OF NON-RESIDENT ATTORNEY <u>9</u> Clark W. Lackert for Leave to Appear Pro Hac Vice. FEE PAID. (ah) (Entered: 06/06/2008)
07/15/2008	<u>13</u>	PROOF OF SERVICE Executed American Tire Distributors, Inc., upon American Tire Corporation served on 7/11/2008, answer due 7/31/2008. Original Summons Returned. (Kobialka, Lisa) (Entered: 07/15/2008)
07/16/2008	<u>14</u>	NOTICE OF ERRATA filed by Plaintiff American Tire Distributors, Inc.. correcting Service of Summons and Complaint Returned Executed (20 days) <u>13</u> <i>correcting text of docket entry from date of service as July 11, 2008 to June 11, 2008 and answer date from July 31, 2008 to July 15, 2008</i> (Kobialka, Lisa) (Entered: 07/16/2008)
07/17/2008	<u>15</u>	REQUEST for Clerk to Enter Default against Defendant American Tire Corporation filed by Plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 07/17/2008)
07/17/2008	<u>16</u>	DECLARATION of Lisa Kobialka re REQUEST for Clerk to Enter Default against Defendant American Tire Corporation <u>15</u> filed by Plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 07/17/2008)
07/17/2008	<u>17</u>	PROOF OF SERVICE filed by Plaintiff American Tire Distributors, Inc., re Declaration (non-motion) <u>16</u> , REQUEST for Clerk to Enter Default against Defendant American Tire Corporation <u>15</u> served on July 17, 2008. (Kobialka, Lisa) (Entered: 07/17/2008)
07/18/2008	<u>18</u>	DEFAULT BY CLERK ENTERED as to Defendant American Tire Corporation (bp) (Entered: 07/18/2008)
07/30/2008	<u>19</u>	PROOF OF SERVICE Executed by Plaintiff American Tire Distributors, Inc., upon Abraham Hengyucius served on 7/28/2008, answer due 8/17/2008. The Summons and Complaint were served by Personal Substituted service, by State Statute statute, upon Julie "Doe", Asian, Female, 40 years old, black hair, 5 feet 3 inches, 130 pounds. Due Dilligence declaration is attached. Original Summons Returned. (Kobialka, Lisa) (Entered: 07/30/2008)
08/11/2008	<u>20</u>	MINUTES OF IN CHAMBERS ORDER held before Judge Margaret M. Morrow:, The court, on its own motion, orders plaintiff(s) to show cause in writing on or before 8/20/2008. (bp) (Entered: 08/11/2008)
08/19/2008	<u>21</u>	REQUEST for Clerk to Enter Default against defendant Abraham Hengyucius filed by plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 08/19/2008)
08/19/2008	<u>22</u>	DECLARATION of Lisa Kobialka re REQUEST for Clerk to Enter Default against defendant Abraham Hengyucius <u>21</u> filed by Plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 08/19/2008)
08/19/2008	<u>23</u>	PROOF OF SERVICE filed by plaintiff American Tire Distributors, Inc., re REQUEST for Clerk to Enter Default against defendant Abraham Hengyucius <u>21</u> , Declaration (non-motion) <u>22</u> served on 08/19/08. (Kobialka, Lisa) (Entered: 08/19/2008)
08/20/2008	<u>24</u>	DEFAULT BY CLERK ENTERED as to Defendant Abraham Hengyucius (bp) (Entered: 08/20/2008)
08/20/2008	<u>25</u>	NOTICE OF MOTION AND MOTION for Default Judgment against Defendants American Tire Corporation and Abraham Hengyucius filed by plaintiff American Tire Distributors, Inc.. (Attachments: # <u>1</u> Proposed Order Regarding Default Judgment and Preliminary Injunction, # <u>2</u> Proposed Order Final Judgment and Permanent Injunction)(Kobialka, Lisa) (Entered: 08/20/2008)

08/20/2008	<u>26</u>	MEMORANDUM in Support of MOTION for Default Judgment against Defendants American Tire Corporation and Abraham Hengyucius <u>25</u> filed by Plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 08/20/2008)
08/20/2008	<u>27</u>	DECLARATION of Lisa Kobialka In Support of MOTION for Default Judgment against Defendants American Tire Corporation and Abraham Hengyucius <u>25</u> filed by Plaintiff American Tire Distributors, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10)(Kobialka, Lisa) (Entered: 08/20/2008)
08/20/2008	<u>28</u>	PROOF OF SERVICE filed by plaintiff American Tire Distributors, Inc., re MOTION for Default Judgment against Defendants American Tire Corporation and Abraham Hengyucius <u>25</u> , Declaration (Motion related), Declaration (Motion related) <u>27</u> , Memorandum in Support of Motion <u>26</u> served on August 20, 2008. (Kobialka, Lisa) (Entered: 08/20/2008)
08/21/2008	<u>29</u>	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following error(s) was found: Hearing information is missing RE: MOTION for Default Judgment against Defendants American Tire Corporation and Abraham Hengyucius <u>25</u> . In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. (bp) (Entered: 08/21/2008)
08/21/2008	<u>30</u>	ORDER STRIKING NOTICE OF MOTION AND MOTION <u>25</u> by Judge Margaret M. Morrow. MOTION for Default Judgment against Defendants American Tire Corporation and Abraham Hengyucius is stricken. No hearing date. (ah) (Entered: 08/21/2008)
08/22/2008	<u>31</u>	Amendment to MOTION for Default Judgment against Defendants American Tire Corporation and Abraham Hengyucius <u>25</u> filed by Plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 08/22/2008)
08/22/2008	<u>32</u>	PROOF OF SERVICE filed by plaintiff American Tire Distributors, Inc., re Amendment (Motion related) <u>31</u> served on August 22, 2008. (Kobialka, Lisa) (Entered: 08/22/2008)
08/27/2008	<u>33</u>	MINUTES OF IN CHAMBERS ORDER held before Judge Margaret M. Morrow: On 8/20/08, plaintiffs filed a MOTION for Default Judgment and permanent injunction against Defendants American Tire Corporation and Abraham Hengyucius <u>25</u> . Defaults were entered against American Tire Corporation on 7/18/08 and against Mr. Hengyucius on 8/20/08. The matter will be deemed submitted on 8/27/08, and the clerk will notify the parties when the court has reached a decision. (bp) (Entered: 08/27/2008)
10/02/2008	<u>34</u>	NOTICE OF MOTION AND MOTION for Order for Regarding Service of Papers on Defendants filed by Plaintiff American Tire Distributors, Inc.. Motion set for hearing on 11/10/2008 at 10:00 AM before Judge Margaret M. Morrow. (Kobialka, Lisa) (Entered: 10/02/2008)
10/02/2008	<u>35</u>	MEMORANDUM in Support of MOTION for Order for Regarding Service of Papers on Defendants <u>34</u> <i>Memorandum of Points And Authorities in Support of Plaintiff American Tire Distributors, Inc.'s Motion For Order Regarding Service of Papers on Defendant</i> filed by Plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 10/02/2008)
10/02/2008	<u>36</u>	DECLARATION of Hannah Lee Support of MOTION for Order for Regarding Service of Papers on Defendants <u>34</u> <i>Declaration of Hannah Lee In Suppot of Plaintiff's Motion For Order Regarding Service of Paper on Defendants</i> filed by Plaintiff American Tire Distributors, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Kobialka, Lisa) (Entered: 10/02/2008)
10/02/2008	<u>37</u>	NOTICE OF LODGING filed re MOTION for Order for Regarding Service of Papers on Defendants <u>34</u> (Attachments: # <u>1</u> Exhibit (proposed) order regarding service of papers on defendants)(Kobialka, Lisa) (Entered: 10/02/2008)
10/03/2008	<u>38</u>	OF SERVICE filed by Plaintiff American Tire Distributors, Inc., re Declaration (Motion related), Declaration (Motion related) <u>36</u> , MOTION for Order for Regarding Service of Papers on Defendants <u>34</u> , Memorandum in Support of Motion, <u>35</u> served on 10/02/08. (Kobialka, Lisa) (Entered: 10/03/2008)

10/03/2008	<u>39</u>	Notice of Withdrawal of Declaration (Motion related), Declaration (Motion related) <u>36</u> , Motion for Order <u>34</u> , Memorandum in Support of Motion, <u>35</u> filed by Plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 10/03/2008)
10/03/2008	<u>40</u>	NOTICE of Status of Service of Papers on Defendants filed by Plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 10/03/2008)
10/03/2008	<u>41</u>	OF SERVICE filed by Plaintiff American Tire Distributors, Inc., re Notice of Withdrawal <u>39</u> For Order Regarding Service of Papers on Defendants served on 10/03/08. (Kobialka, Lisa) (Entered: 10/03/2008)
10/03/2008	<u>42</u>	OF SERVICE filed by Plaintiff American Tire Distributors, Inc., re Notice (Other) <u>40</u> Proof of Service Regarding Notice of Status of Service of Papers on Defendants served on 10/03/08. (Kobialka, Lisa) (Entered: 10/03/2008)
10/14/2008	<u>43</u>	OF SERVICE filed by Plaintiff American Tire Distributors, Inc., re Notice (Other) <u>40</u> Proof of Service of Documents on Abraham Hengyucius served on 10/08/08. (Kobialka, Lisa) (Entered: 10/14/2008)
10/14/2008	<u>44</u>	OF SERVICE filed by Plaintiff American Tire Distributors, Inc., re Notice (Other) <u>40</u> Proof of Service on American Tire Corporation served on 10/08/08. (Kobialka, Lisa) (Entered: 10/14/2008)
01/14/2009	<u>45</u>	NOTICE OF MOTION AND MOTION to Set Aside Default and Proof of Service filed by Defendants American Tire Corporation, Abraham Hengyucius. Motion set for hearing on 3/2/2009 at 10:00 AM before Judge Margaret M. Morrow. (Tam, Maria) (Entered: 01/14/2009)
01/15/2009	<u>46</u>	IN CHAMBERS ORDER ADVANCING BRIEFING SCHEDULE by Judge Margaret M. Morrow: re: The briefing schedule to the MOTION to Set Aside Default <u>45</u> is advanced as follows: Opposition is due 01/27/09. Reply is due 02/03/09. (ah) (Entered: 01/15/2009)
01/26/2009	<u>47</u>	NOTICE Change of Attorney Information filed by plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 01/26/2009)
01/27/2009	<u>48</u>	MEMORANDUM in Opposition To Motion To Set Aside Default filed by Plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 01/27/2009)
01/27/2009	<u>49</u>	DECLARATION of Kathleen McCarthy in support of MOTION to Set Aside Default and Proof of Service <u>45</u> Plaintiff American Tire Distributors, Inc.'s Opposition to Defendants' Motion to Set Aside Default filed by Plaintiff American Tire Distributors, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, Part I, # <u>4</u> Exhibit 3, Part II, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9, # <u>11</u> Exhibit 10, # <u>12</u> Exhibit 11, # <u>13</u> Exhibit 12, # <u>14</u> Exhibit 13, # <u>15</u> Exhibit 14, # <u>16</u> Exhibit 15, # <u>17</u> Exhibit 16, # <u>18</u> Exhibit 17, # <u>19</u> Exhibit 18, # <u>20</u> Exhibit 19, # <u>21</u> Exhibit 20, # <u>22</u> Exhibit 21, # <u>23</u> Exhibit 22, # <u>24</u> Exhibit 23, # <u>25</u> Exhibit 24, # <u>26</u> Exhibit 25 Part I, # <u>27</u> Exhibit 25 Part II, # <u>28</u> Exhibit 26)(Kobialka, Lisa) (Entered: 01/27/2009)
01/27/2009	<u>50</u>	OF SERVICE filed by Plaintiff American Tire Distributors, Inc., re MEMORANDUM in Opposition to Motion <u>48</u> , Declaration (Motion related), Declaration (Motion related), Declaration (Motion related), Declaration (Motion related) <u>49</u> served on January 27, 2009. (Kobialka, Lisa) (Entered: 01/27/2009)
01/30/2009	<u>51</u>	NOTICE of Change of Attorney Information - J. Hannah filed by plaintiff American Tire Distributors, Inc.. (Kobialka, Lisa) (Entered: 01/30/2009)

PACER Service Center		
Transaction Receipt		
02/06/2009 15:25:27		
PACER	mt0883	Client Code:

CM/ECF - California Central District

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Login:			
Description:	Docket Report	Search Criteria:	2:08-cv-02971-MMM-JTL End date: 2/6/2009
Billable Pages:	5	Cost:	0.40

Exhibit B

California Business Portal

Secretary of State DEBRA BOWEN

DISCLAIMER: The information displayed here is current as of JAN 30, 2009 and is updated weekly. It is not a complete or certified record of the Corporation.

Corporation		
AMERICAN SEASHORES INTERNATIONAL INC.		
Number: C2565431	Date Filed: 10/24/2003	Status: active
Jurisdiction: California		
Address		
15421 E GALE AVE		
CITY OF INDUSTRY, CA 91715		
Agent for Service of Process		
EMILY GUO		
15421 E GALE AVE		
CITY OF INDUSTRY, CA 91715		

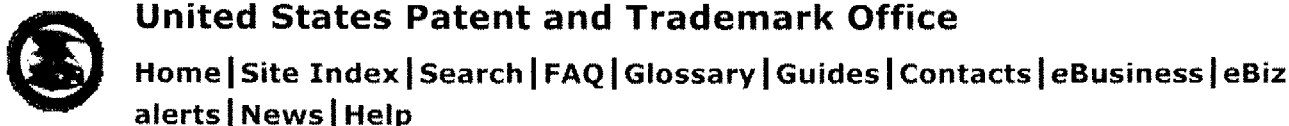
Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

Exhibit C

Trademark Electronic Search System (TESS)

Page 1 of 2



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Feb 6 04:03:28 EST 2009



Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 5 out of 10**

(Use the "Back" button of the Internet Browser to return to TESS)



Word Mark	AMERICAN TIRE DISTRIBUTORS
Goods and Services	IC 035. US 100 101 102. G & S: Distributorship services in the field of automotive and vehicle tires, wheels, equipment, after-market accessories and replacement parts. FIRST USE: 20020530. FIRST USE IN COMMERCE: 20020530
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.01.03 - Circles, incomplete (more than semi-circles); Incomplete circles (more than semi-circles) 26.01.17 - Circles, two concentric; Concentric circles, two; Two concentric circles 26.01.21 - Circles that are totally or partially shaded. 26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band (s) or bar(s) 26.17.25 - Other lines, bands or bars
Serial Number	78443064
Filing Date	June 29, 2004
Current Filing Basis	1A

Trademark Electronic Search System (TESS)

Page 2 of 2

Original Filing Basis 1B

Published for Opposition June 14, 2005

Registration Number 3024766

Registration Date December 6, 2005

Owner (REGISTRANT) American Tire Distributors, Inc. CORPORATION DELAWARE
12200 Herbert Wayne Court, Suite 150 Huntersville NORTH CAROLINA
28078

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Clark W. Lackert

Prior Registrations 1522166

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TIRE
DISTRIBUTORS" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

Register PRINCIPAL-2(F)-IN PART

Live/Dead Indicator LIVE

Distinctiveness Limitation Statement in part, as to AMERICAN

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
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